



7020-02

## INTERNATIONAL TRADE COMMISSION

### Certain Pickup Truck Folding Bed Cover Systems and Components Thereof

[Investigation No. 337-TA-1143]

#### **Commission Determination Not to Review an Initial Determination Terminating the Investigation as to a Single Respondent Based on a Consent Order Stipulation and Consent Order, and Amending the Complaint and Notice of Investigation; Issuance of Consent Order; and Request for Written Submissions on Remedy, the Public Interest, and Bonding**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 27) of the presiding administrative law judge (“ALJ”): (1) terminating the above-captioned investigation as to respondent Sunwood Industries Co., Ltd. (“Sunwood”) of Jiangsu, China based on a consent order stipulation and consent order, and (2) amending the complaint and notice of investigation. The Commission has issued the respective consent order and is requesting written submissions on remedy, the public interest, and bonding concerning defaulting respondent Ningbo Huadian Cross Country Automobile Accessories Co., Ltd. (“Ningbo”) of Ningbo, China.

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the

Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on February 15, 2019, based on a complaint filed on behalf of Extang Corporation and Laurmark Enterprises, Inc. d/b/a BAK Industries (collectively, "Complainants"), both of Ann Arbor, Michigan. 84 FR 4534-35 (Feb. 15, 2019). The complaint alleges violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("Section 337"), based upon the importation into the United States, sale for importation, and the sale within the United States after importation of certain pickup truck folding bed cover systems and components thereof by reason of infringement of certain claims of U.S. Patent Nos. D620,877; 7,188,888; 7,484,788; 8,061,758; 8,182,021; and 8,690,224; and U.S. Trademark Registration Nos. 5,104,393 and 3,904,016. The Commission's notice of investigation names numerous respondents, including Ningbo and Sunwood. The Office of Unfair Import Investigations ("OUII") is also a party to the investigation. The Commission previously found Ningbo in default. Order No. 23 (May 3, 2019), *unreviewed by Comm'n Notice* (May 29, 2019). All other respondents, with the exception of Sunwood, have been terminated from the investigation based on consent order stipulation and proposed consent order. *See* Order Nos. 13-19 (Apr. 12, 2019), *unreviewed by Comm'n Notice* (May 8, 2019); Order Nos. 20-21 (Apr. 26, 2019), *unreviewed by Comm'n Notice* (May 15, 2019).

On May 30, 2019, Complainants and Sunwood filed a joint motion to terminate the

investigation as to Sunwood based on a consent order stipulation and proposed consent order. On June 11, 2019, OUII filed a response supporting the joint motion, including a request to amend the complaint and notice of investigation to change the full name of Sunwood to reflect the correct entity being accused.

On July 3, 2019, the ALJ issued the subject ID (Order No. 27) granting the joint motion for termination as to Sunwood. The ALJ found that the consent order stipulation and consent order satisfy the requirements of Commission Rule 210.21(c) (19 CFR 210.21(c)). He further found, pursuant to Commission Rule 210.50(b)(2) (19 CFR 210.50(b)(2)), that there is no indication that termination of this investigation as to Sunwood based on the consent order stipulation would adversely impact the public interest. The ALJ also found that good cause exists, pursuant to Commission Rule 210.4 (19 CFR 210.14), to grant OUII's request and amend the complaint and notice of investigation to accurately reflect the correct name for respondent Sunwood as Changzhou Sunwood International Trading Co., Ltd. The ALJ terminated the investigation before him because Sunwood is the last participating respondent and Complainants did not request a general exclusion order. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID and has issued the requested consent order.

Section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission Rule 210.16(c) (19 CFR 210.16(c)) authorize the Commission to order limited relief against a respondent found in default, unless after consideration of the public interest factors in Section 337(g)(1), it finds that such relief should not issue. Accordingly, in connection with the final disposition of this investigation, the Commission is interested in receiving written submissions that address the form of remedy, if any,

that should be ordered with respect to Ningbo. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

**WRITTEN SUBMISSIONS:** Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding.

Complainants and OUI are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the asserted patents expire, the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The written submissions regarding remedy, bonding, and the public interest and proposed remedial orders must be filed no later than close of business on August 12, 2019. Reply submissions must be filed no later than the close of business on August 19, 2019. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary pursuant to Section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1143") in a prominent place on the cover page and/or the first page. (*See Handbook on Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)*). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must

include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel<sup>1</sup>, solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: July 29, 2019.

Lisa Barton,  
Secretary to the Commission.

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<sup>1</sup> All contract personnel will sign appropriate nondisclosure agreements.

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